IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8600 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJYABEN JETHALAL DHOLARIYA - Petitioner(s)
Versus
TOWN PLANING OFFICER & 5 - Respondent(s)

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Appearance :
MR MEHUL S SHAH for Petitioner(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
MR RC KODEKAR, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1,
NONE for Respondent(s) : 2 - 6.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/04/2007

ORAL JUDGMENT

1. Shri Mehul S. Shah, learned counsel for the petitioners; Shri R.C. Kodekar, learned AGP for

the respondent no.1; None for respondents no. 2 to 6 though name of Shri Shah appears on the board.

2. On an earlier occasion, the petitioner had come to this Court in Special Civil Application No. 8074 of 1990, a Division Bench of this Court vide order dated 10.12.90 held that as the remedy of appeal was available to the petitioner, the High Court would not interfere in the matter. However, the High Court permitted the petitioner to file an appeal to the appellate authority with a direction that the appellate authority shall consider the grievances of the petitioner. The petitioner thereafter filed an appeal [TPS] Appeal No. 73 of 1991 [Civil Appeal No. 9/91] which was dismissed by the Board constituted under the provisions of the Gujarat Town Planning & Urban Development Act, 1976 vide its judgment dated 16.12.93 holding that the petitioner-appellant would not come within the purview of Section 54 of the Act, the appeal was accordingly rejected. On the last date, the respondents raised an

objection that in view of the language of Sections 52, 53 and 54 of the Act and looking to the nature of the claim made by the petitioner, appeal was not maintainable. The State thereafter prayed for time to make an application for review of the order dated 10.12.90 passed by the Division Bench in Special Civil Application No. 8074 of 1990. Shri Kodekar, learned AGP for the State submits that the Division Bench did not condone the delay and rejected the application for recall and review of the order dated 10.12.90.

3. As the order dated 10.12.90 has become final between the parties, rights of the parties would be governed by the said order and the appeal now cannot be held to be not maintainable in view of the order passed by the Division Bench, at least for this case.

4. The order passed by the Board constituted under the provisions of the Gujarat Town Planning & Urban Development Act, 1976 is hereby set aside. The matter is remanded back to the Board for deciding the appeal on merits. The parties

present in the Court shall remain present before the District Judge on 7th May, 2007 and file copy of this order. After receiving the copy of this order, the District Judge would constitute the Board and ask the Board to issue necessary notices to all the parties and thereafter, the Board shall decide the matter on merits in accordance with law. The Writ application is allowed. Rule is made absolute. No costs.

[R.S. GARG, J.]

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